

**27. Appendix Q — Excerpts From RFCS and Interlocal Agreements**



## **RFCS contract Clauses**

### **3.I-28 Agency Caused Delays**

28.1 Agency Caused Delays are delays that affect a Critical Path as defined in the approved Baseline Project Schedule and arise from the following matters and no others: (a) a suspension order pursuant to Section 3.I-30 not caused by the actions or inactions of the Contractor, (b) failure or inability of the Agencies to obtain the permits it agrees in its sole discretion to obtain, (c) failure of the Agencies to provide availability of Transit/Ferry facilities according to the schedule for such availability provided by the Agencies, (d) failure of the Agencies to provide operation rules in a timely manner, (e) unavoidable delay caused by governmental action which is beyond the control of and could not have been reasonably anticipated by the Contractor, (f) failure of the Agencies to comply with Section 2.2(c), or (g) any additional Work requested by the Agencies. Any court order to suspend Work shall not be considered an Agency Caused Delay (although it may qualify as a Force Majeure Event) despite the fact that the Agencies may specifically direct the Contractor to comply with the court order.

28.2 To the extent an Agency Caused Delay impacts the Critical Path specified in the approved Baseline Project Schedule, the Contractor shall be entitled to an equitable adjustment to the schedule and/or additional compensation subject to the Contractor's compliance with the Contract Claims provisions of Section 3.I-33.

28.3 Under no circumstances, during the performance of the Work, will the Agencies assume responsibility for any delay, interruption or damages caused by or arising from the actions of the Contractor, its employees, agents, officers or subcontractors or any other persons for whom the Contractor may be legally or contractually responsible.

### **3.I-33 Contract Claims**

33.1 The Contractor may file a Contract Claim as provided herein if the Contractor requests or believes for any reason that it is entitled to: additional compensation or an extension to the Baseline Project Schedule, including but not limited to in response to a Change Order; or less of a reduction in compensation or schedule due to a change in the scope of Work, including but not limited to in response to a Change Order. The Contractor shall not be entitled to any additional compensation or to any extension to the Baseline Project Schedule unless the Contractor provides the Contract Administrator with a written notice of claim, in accordance with the following requirements, no later than fourteen (14) working days after receipt of a Change Order or thirty (30) days after the Contractor becomes, or should have become, aware of any other circumstance giving rise to a Contract Claim. Provided, however, the Contractor is barred from submitting a

Contract Claim after submittal of a Payment Milestone invoice if the circumstance giving rise to the Contract Claim occurred prior to the date of the invoice; and in no event may the Contractor submit a Contract Claim after submitting an invoice for final payment after Full System Acceptance.

33.2 The Contract Claim shall include the following information:

- a. A detailed factual statement of the Contract Claim for additional compensation and time, if any, or less of a reduction, providing all necessary dates, locations, and items of Work related to the Contract Claim;
- b. The dates of all facts related to the Contract Claim, as well as the names of individuals knowledgeable about the Contract Claim;
- c. References to specific provisions of the Contract that support the Contract Claim and a statement of the reasons why such provisions support the Contract Claim;
- d. Identification of any documents and the substance of any oral communications that support the Contract Claim;
- e. If an extension of time is sought:
  - (i) The specific days and dates for which it is sought;
  - (ii) The specific reasons the Contractor believes a time extension should be granted; and
  - (iii) The specific provisions of the Contract Documents under which it is sought; and
- f. If additional compensation or a lesser reduction is sought by the Contractor, the exact amount sought and substantiating details shall be provided by the Contractor, including, but not limited to, the Contractor's and any Subcontractor's material costs, staff classifications and billing rates, and labor hours, which would allow the Agencies to determine whether the amount sought was fair and reasonable. The Contractor shall only be required to provide copies of documents supporting these cost details as is necessary to enable the Agencies to comply with applicable law, the requirements of FTA Circular 4220.1D and/or as provided in Section 3.1-34, "Dispute Review Board."

33.3 The Contract Claim shall contain the following notarized statement:

Under the penalty of law for perjury or falsification, the undersigned,  
\_\_\_\_\_, \_\_\_\_\_ of  
(name) (title)

\_\_\_\_\_ (company) hereby certifies that the Contract Claim for extra compensation and time, if any, made herein for Work on this Contract is a true and complete statement of the factual basis of the Contract Claim and all actual costs incurred and time sought, and is fully documented and supported under the contract between the parties.

### **Interlocal Cooperation Agreement Contract Clause**

#### **XI. Legal Relations**

- F. In the event an Agency fails to perform an obligation under this Agreement, the Agencies shall have the right to bring an action for specific performance, damages and any other remedies available under this Agreement, at law or in equity.